

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:) Examiner: Louise Wang-Zhiyang HUMPHREY
William DOWER, et. al.) Art Unit: 1648
Application No. 09/650,337) Attorney's Docket No. AFX-0001-C7
Filing Date: August 20, 2000) Customer No. **77845**
For: **PEPTIDE LIBRARY AND SCREENING**)
SYSTEMS)

**FILED VIA EFS
ON APRIL 24, 2009**

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)**

MAIL STOP: OFFICE OF PETITIONS

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

The Determination of Patent Term Adjustment under 35 U.S.C. 154(b) ("Determination") dated February 27, 2009 for United States ("U.S.") Application No. 09/650,337, states that the Patent Term Adjustment ("PTA") is 882 days. Applicants hereby notify the United States Patent and Trademark Office ("USPTO") that the PTA cited under the *Determination* is believed to be in error, and request that the PTA accorded to the above-referenced patent be 1630 days.

REMARKS

Patent Term Adjustment

The total PTA was noted as 882 days under the *Determination* dated February 27, 2009 for U.S. Application No. 09/650,337.

Under the opinion entered on September 30, 2008 in *Wyeth vs. Dudas* (Civil Action No. 07-1492) ("*Wyeth*"), the U.S. District Court granted summary judgment to *Wyeth* concluding that the periods of time accorded under 35 U.S.C. 154(b)(1)(A) and under 35 U.S.C. 154(b)(1)(B) only "overlap" if they occur on the same day.

In reviewing the PTA History for U.S. Application No. 09/650,337 as published in the PAIR system of the USPTO, Applicants note that the Three Year Date, which begins the time period under 35 U.S.C. 154(b)(1)(B), is August 28, 2003. Applicants further note that the time period under 35 U.S.C. 154(b)(1)(B) ends with the filing of a Request for Continued Examination on July 12, 2007. Applicants have further determined that there is an "overlap" of 666 days of time accumulated under 35 U.S.C. 154(b)(1)(A) and 35 U.S.C. 154(b)(1)(B) for the period from August 28, 2003 to June 24, 2005. Applicants conclude that there are 748 days of additional PTA in accordance with *Wyeth*.

Thus, in accordance with the summary judgment under *Wyeth*, Applicants should be accorded 748 days (08/28/2003 to 07/12/2007 less the overlap of 666 days from 08/28/2003 to 06/24/2005) of additional USPTO Three Year Delay.

The Total USPTO Delay should be corrected to 2083 days.

The Total Applicants' Delay equals 453 days

Thus, the Total PTA is 1630 days in favor of Applicants.

The Applicants request that the USPTO recalculate the PTA in view of the above remarks, and accord Applicants 1630 days of PTA.

CONCLUSION

Applicants request that the PTA for U.S. Application No. 09/650,337 be corrected to 1630 instead of the 882 days indicated on the *Determination*.

Applicants hereby authorize payment from Deposit Account No. 50-4634 (referencing Attorney's Docket No. AFX-0001-C7) for the PTA adjustment request as set forth in 37 C.F.R. § 1.18(e). However, Applicants do not believe the \$200.00 charge for reconsideration of the PTA should be charged to the Applicants, as Applicants believe that no error was made on the part of the Applicants. Please deposit any refund, or, if applicable, charge any additional fees that may be due in connection with this application, to the afore-mentioned Deposit Account. Should there be any questions, please contact the undersigned at the correspondence address listed below.

Respectfully submitted,

Date: April 24, 2009

By: 

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